IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13404 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

C C CHOKSHI & COMPANY - Petitioner(s)

Versus

ASST. PROVIDENT FUND COMMISSIONER & 1 - Respondent(s)

==========

Appearance :

M/S TRIVEDI & GUPTA for Petitioner(s) : 1,
MR PJ MEHTA for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/09/2005

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged the legality of an Order dated 24.11.2003 passed by the the Assistant Provident Fund Commissioner, Vadodara.

2.Short facts leading to the present petition are that the petitioner is a firm of Chartered Accountants and has an establishment at Vadodara. The respondent authorities on the premise that the petitioner was required to be covered under the provisions of the Employment Provident and Misc. Provisions Act, 1952(hereinafter to be referred to as “the said Act”), initiated proceedings against the petitioner. Broadly stated, it is the case of the respondents that during the relevant period, the petitioner employed more than 20 employees and was therefore required to follow the requirement of the said Act. Eventually, after show-cause notice and hearing the petitioner, impugned order dated 24.11.2003 came to the passed. There are two contentious issues arising from the impugned Order. First controversy was with respect to the nature of the establishment and whether the Vadodara office of the petitioner was an independent establishment or whether it was an extension of its Bombay establishment. In turn, this would mean whether the persons employed at other establishment, which the petitioner admittedly had at Ahmedabad and Mumbai should be clubbed along with the persons employed at Vadodara office for the purpose of ascertaining the liability of the petitioner

to be covered under the provisions of the said Act. In other words, it was the case of the petitioner that the Vadodara office was an independent establishment and the number of persons employed at Vadodara itself alone would decide the liability of the petitioner to be covered under the provisions of the said Act. It was the case of the petitioner that the respondents wrongly clubbed number of persons employed elsewhere outside Vadodara to determine that more than 20 persons were employed at the relevant time.

2.1In response to the notice issued by this Court, respondents have filed affidavit in reply dated 01.12.2004. In the affidavit in reply, it is stated that the contention of the establishment is irrelevant in view of the fact that the aspect of clubbing of all firms has not been taken into account while passing Order under Section 7A dated 24.11.2003. Having some doubts, learned Advocate Shri P.J. Mehta also secured the presence of Shri E.L.P Nair, Assistant Provident Fund Commissioner, Vadodara, who states that the above averments in the affidavit in reply is correct and that while passing the impugned Order, the authority has taken into account persons employed at Vadodara by the petitioner and at no other place. In that view of the

matter, this legal controversy need not be decided in the present case.

2.2Learned Advocate Shri Thaker appearing for the petitioner however submitted that the respondents wrongly considered trainees who were under training at the Vadodara office to calculate that more than 20 persons were employed at Vadodara. He submitted that those persons who are attending the establishment as trainees could not have been termed as employees and by excluding such persons from consideration of total number of employees, number of persons engaged by the establishment would not cross 20.

3.On the other hand, learned Advocate Shri Mehta sought to support the impugned Order. He submitted that the authorities have rightly applied the provisions of the said Act and therefore the impugned Order calls for no interference.

4.Having considered the submissions, short question is whether persons who are under training at the Vadodara office of the petitioner could have been considered as employees for the purpose of the said Act and included for considering the total number of employees to decide

whether the establishment was required to be covered under the provisions of the said Act, since total number of employees at the relevant time exceeded 20.

4.1In this regard, learned Advocate Shri Thaker for the petitioner pointed out that a Single Judge of the Madras High Court in the case of **Sri Rama Vilas Service Ltd. Vs. Regional Provident Fund Commissioner reported in 2000(1) L.L.N. 834** came to the conclusion that persons who are "trainees" cannot be included in the total number of persons employed by the establishment for the purpose of the said Act. Observations made by the learned Single Judge in the said Judgment in Para 10 to 13 are as under :

> "10. It is the specific contention of the petitioner herein that the petitioner herein has been engaging trainees for the purpose of training, in accordance with the Training Scheme, the Rules and Regulations as well as the Standing Orders, that a separate scheme was also framed on January 31, 1983, and as could be seen from the scheme, training to the persons with specified qualifications, that minimum qualifications have also been prescribed, the training period has also been prescribed, that the trainees were paid a consolidated stipend, which would increase year after year during the period of training, if they find that there is no proper response from the trainees. That apart, It is also significant to note that *the said trainees are paid stipend and they are not eligible for any other benefits, monetary or otherwise, which are extended to the permanent category of the workmen.* Further, it is also significant to note that the trainees are

recruited for a specified period under the scheme and *there is no guarantee for their employment in the company after the completion of the training period.* Further, the traineeship can be terminated at any time without any notice of reason in case they are found medically unfit during the course of training or in case they are not able to cope up with the training which is given to them. All these aspects clearly go to show that the persons and question herein are only “trainees” and the aspects have not been properly appreciated or considered by the respondent. Therefore, there is no merit in the contention of the respondent that the petitioner's establishment has deliberately classified certain regular employees as “trainees” with a view to deny them the provident fund benefits. Therefore, such contention of the respondent cannot be accepted. That being so, the impugned order of the respondent is vitiated by material errors of law apparent on the face of the record and that, therefore, is bad in law and consequently liable to be set aside.

11. Further, in support of their case, the petitioners rely on the two decisions as follows:

Employees' State Insurance Corporation Vs. Tata Engineering and Locomotive Company Ltd. [1975(2) L.L.N. 498] and Gnanambika Mills, Ltd. Vs. Employees State Insurance Corporation[1997 (1) L.LN.413].

12. In the Supreme Court case, it has been held by the Apex Court thus, in Para 7, page 500 of 1975 (2) L.L.N.:

“.....That certain payment is made during the apprenticeship, by whatever names called, and that the apprentice has to be under certain rules of discipline do not convert the apprentice as a regular employee under the employer. Such person remains a learned and is not employee....”

13. In the second decision cited above, the Court also has held that the apprentices and not employees and hence the payment made to them do not attract the Employees' State Insurance Act. In the said case, the Court followed the above decision of the Supreme Court. In the facts and circumstances of the case on hand, the above judgements squarely

> apply to it. Therefore, on the strength of the above, the respondent cannot consider the persons in question herein as employees of the petitioner-company and claim contribution from the petitioner for the payments made to them."

4.2The said Act is a central legislation applicable to the whole of the country. Ordinarily, this Court would be inclined to accept the verdict rendered by another High Court under a central legislation. No contrary material has been produced before me to persuade me to take a different view than the ratio laid down by the decision of the Single Judge of Madras High Court.

4.3Since full material particulars regarding the existing number of trainees at the establishment is not before me, it is not possible for me to pass final conclusive Order in this regard. It will be for the authorities to re-examine the issue and come to an appropriate conclusion on the basis of the observations made hereinabove. For the above purpose, impugned Order is quashed. The petitioner shall file a representation before the respondents indicating the number of employees and trainees with the establishment at the relevant period. After examining the records and conducting such inquiry as may be necessary, respondents shall pass fresh orders in accordance with law, bearing in mind the observations made in this

Order. With these directions, the petition is allowed to the above extent. Rule is made absolute accordingly. No order as to costs.

(Akil Kureshi, J.)

*bjoy